

J. W. DOYLE

IBLA 84-284 Decided June 11, 1985

Appeal from decisions of the Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. N MC 88340 through N MC 88344.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

To comply with 43 U.S.C. § 1744 (1982), the owner of an unpatented mining claim located on public land must file his evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of BLM. By regulation 43 CFR 3833.0-5(m), the Department has considered such documents to be timely filed if placed in an envelope postmarked by the United States Postal Service on or before Dec. 30 and received in the proper BLM office on or before the following Jan. 19. Where the envelope containing the necessary documentation is postmarked Dec. 31, the claim is properly declared abandoned and void.

APPEARANCES: J. W. Doyle, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

J. W. Doyle has appealed from decisions of the Nevada State Office, Bureau of Land Management (BLM), which declared five mining claims abandoned and void for failure to file timely proof of labor or notice of intent to hold the claims. BLM declared that the required documentation for the Hidden Canyon #1 through #3, (N MC 88340 through N MC 88342), Midget (N MC 88343), and Rudie (N MC 88344) claims was not postmarked by December 30, 1983, and received within 20 days of that date. Therefore, the claims were conclusively deemed to be abandoned pursuant to 43 CFR 3833.2.

The five claims were located in 1968 and 1969 and recorded with BLM on September 6, 1979. Appellant filed affidavits of annual assessment work timely from 1979-1982. BLM received appellant's 1983 for these claims on January 4, 1984, in an envelope postmarked December 31, 1983.

In the statement of reasons for appeal, appellant emphasizes that the necessary document was mailed on December 31, 1983, "a neglect" of only one day. Appellant also attached to his statement of reasons a copy of the 1983 affidavit as proof of intent to hold the claims. Consideration of this appeal was suspended pending decision of United States v. Locke, 105 S. Ct. 1785 (1985); following decision of that case by the Supreme Court on April 1, 1985, consideration of this appeal may now proceed.

[1] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982), requires the owner of an unpatented mining claim located prior to October 21, 1976, to file with BLM an affidavit of assessment work or a notice of intent to hold the claim "prior to December 31 of each year" following recordation of the location notice with BLM. The failure to file the required documentation "shall be deemed conclusively to constitute an abandonment of the mining claim." 43 U.S.C. § 1744(c) (1982). The Departmental regulation implementing FLPMA requires:

The owner of an unpatented mining claim located on Federal lands * * * shall have filed or caused to have been filed on or before December 30 of each calendar year following the calendar year in which such claim was located, * * * evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

43 CFR 3833.2-1(b)(1). Consequently, both the statute and the regulations require annual filings to be made on or before December 30. See 43 CFR 3833.4(a). Since 1982, BLM has considered filings to be timely if placed in an envelope postmarked by United States Postal Service not later than December 30 and received by the agency not later than the following January 19. 43 CFR 3833.0-5(m).

In United States v. Locke, *supra*, the owners of unpatented mining claims personally delivered their required documents to the proper BLM office on December 31. The Supreme Court affirmed the administrative determination that the claims were abandoned and void for failure to meet the December 30 deadline found in section 314 of FLPMA, 43 U.S.C. § 1744 (1982). The court's opinion holds that: "[W]e find that Congress intended in § 314(c) to extinguish those claims for which timely filings were not made. Specific evidence of intent to abandon is simply made irrelevant by § 314(c); the failure to file on time, in and of itself, causes a claim to be lost." United States v. Locke, *supra* at 1795-96. Nor can this Board excuse late filing because documents were mailed one day late. As the Supreme Court stated in United States v. Locke, *supra*:

The notion that a filing deadline can be complied with by filing sometime after the deadline falls due is, to say the least, a surprising notion, and it is a notion without limiting principle. If 1-day late filings are acceptable, 10-day late filings might be equally acceptable, and so on in a cascade of exceptions that would engulf the rule erected by the filing deadline; yet regardless of where the cutoff line is set, some individuals will always fall just on the other side of it. Filing deadlines, like statutes of limitations, necessarily operate harshly and arbitrarily

with respect to individuals who fall just on the other side of them, but if the concept of a filing deadline is to have any content, the deadline must be enforced. "Any less rigid standard would risk encouraging a lax attitude toward filing dates." United States v. Boyle, 469 U.S., at , 105 S. Ct. at 692. A filing deadline cannot be complied with, substantially or otherwise, by filing late -- even by one day.

105 S. Ct. at 1796. To have been timely filed through use of the mails under Departmental regulations, envelope containing appellant's documents should have been postmarked not later than December 30. See 43 CFR 3833.0-5(m). Cf. also James and Lillian Chudnow, 86 IBLA 315 (1985) and Anthony F. Hovey, 79 IBLA 148 (1984) (Cases dealing with mailed documents received after a deadline where regulations established filing requirements for both mailing and receipt).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed are affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

R. W. Mullen
Administrative Judge

